

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:05cr340

UNITED STATES OF AMERICA

vs.

ELIJAH JUNIOR SIMMS

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ORDER

THIS MATTER is before the Court upon motion of the defendant pro se for a reduction of sentence based on the retroactive amendments to the United States Sentencing Guidelines relating to crack cocaine. (Doc. No. 61).

The defendant was sentenced to 120 months' imprisonment pursuant to the mandatory minimum sentence prescribed in 21 U.S.C. § 841(b)(1)(B), based on a jury's guilty verdict of possession with intent to distribute 5 grams or more of a mixture and substance containing cocaine base.¹ (Doc. No. 3: § 851 Notice; Doc. No. 31: Verdict; Doc. No. 39: Judgment; Doc. No. 40: Statement of Reasons; Pre-sentence Report at ¶ 69). Accordingly, the change in the guidelines does not affect the defendant's sentence. Neal v. United States, 516 U.S. 284, 296 (1996) (retroactive amendment to guidelines does not alter statutory mandatory minimum); United States v. Hood, 556 F.3d 226, 233 (4th Cir. 2009).

IT IS, THEREFORE, ORDERED that the defendant's motion is **DENIED**.

¹ The defendant was also sentenced to a concurrent term of 120 months' imprisonment for a violation of 18 U.S.C. § 922(g). (Doc. No. 39: Judgment)

The Clerk is directed to certify copies of this order to the defendant, the Community Defender, the United States Attorney, the United States Marshals Service, and the United States Probation Office.

Signed: July 6, 2009

A handwritten signature in cursive script, reading "Robert J. Conrad, Jr.", written over a horizontal line.

Robert J. Conrad, Jr.
Chief United States District Judge

